Illinois Liquor Control Commission
Attn: Mr. Richard Haymaker
100 W Randolph Street - Suite 7-801
Chicago, Illinois 60601

May 30, 2014

Re: ILCC Staff Proposed Rules for June 4th Commission meeting consideration

Dear Mr. Haymaker,

On behalf of the Hospitality Business Association of Chicago, and our membership of over 200 locally owned on-premise retailers we respectfully submit the following input on the proposed rules by the ILCC Staff ("ILCC package") for the Commissioners consideration at their June 4th ILCC meeting. Thank you for the opportunity to provide this input on behalf of our locally owned bar and restaurant small business membership.

Proposed Rule Section 100.10

While supportive of the rule's intent "indirect equitable interest" should be further clarified. As currently proposed confusion is possible on whether this would extend to a financing company or business lending entity in a form could range from a financing statement secured by a promissory note, bank loan, or other Uniform Commercial Code covered agreement.

Because, except in relatively rare instances when Small Business Administration lending is the case, the realistic options for hospitality business financing is a complex and variegated array of options.

The definition of "Licensee" or "License Holder" should be further refined to make it explicitly clear that general managers and shift managers who have great latitude in basic, and frequently delegated, operational areas such as product ordering and front line staff hiring are not "Licensees" or "License Holders" included within the scope of this rule.

Proposed Rule Section 100.255 Off Premises Retail Warehousing Prohibited

Within Chicago it is extremely common for retailers to store inventory, and place their keg coolers, within the basement of the establishment. Few, if any, local liquor licenses reference these storage areas. Section "d" of this proposed rule should be amended to clarify that basement or upstairs inventory storage of beverage alcohol to the locally licensed premises is allowed, provided the storage is immediately adjacent to the licensed premises.

Proposed Rule Section 100.265 - License Eligibility; Beneficial Owner

As with rule 100.100 this rule would benefit from clarification on whether or when "indirect financial interest" includes standard financing mechanisms including promissory note lenders or lenders providing loans backed by equipment or accounts receivable (commonly known as credit card receivables loans or credit card factoring). These are very common means of financing for small, locally owned operators, and should not be unduly discouraged.

In addition, this proposed rule repeatedly creates undesirable ambiguity and confusion for licensees with fairly common landlord participation/commission clauses at certain revenue or sales benchmarks triggering payments by tenant Licensees (often known as 'participation leases'). In many cases these payments many not be triggered for years, if ever, after lease execution, but once triggered can often exceed 5% of annual profit. Clarification in this proposed rule on whether the standard is 5% of revenue or profit, and whether the arrangement must be disclosed to the Commission at lease commencement or upon being triggered would be helpful. In order to not unduly burden the Commission staff or the lease negotiation process for all parties, clear guidance on this, with disclosure only required when these benchmarks are reached, and only when exceeding 5% of gross revenue, would be preferable.

Proposed Rule Section 100.285 Happy Hours

Part a) No objection

Part b) Creating a Rule that essentially regurgitates the statutory language of 235 ILCS 5/6-28(b)(1) verbatim is unnecessary and will create undue confusion should that component of the Illinois Liquor Control Act ever be modified legislatively. At most a blanket rules reference that licensees must strictly comply with 235 ILCS 5/6-28(b)(1) would be more than adequate.

Part c) Creating a Rule that essentially regurgitates the statutory language of 235 ILCS 5/6-28(b)(2) verbatim is unnecessary and will create undue confusion should that component of the Illinois Liquor Control Act ever be modified legislatively. At most a blanket rules reference that licensees must strictly comply with 235 ILCS 5/6-28(b)(2) would be more than adequate.

Part c(2) "Private Function Exception" - as ILCC staff devote in excess of a full page to the limited private function exception of the Happy Hour Law, this entire proposed language should be proposed and promulgated as a single independent rule. The proposed regulatory schematic proposed by this portion of the proposed rule alone are so confusing and so unwieldy by hospitality operators, that the Hospitality Business Association of Chicago strongly urges that a subject matter hearing on this topic alone be held by the Commissioners at a future Chicago meeting of the Commission.

At a minimum, the proposed rule is problematic for the following, not exhaustive, list of reasons:

1) "Prearrangement" is not defined. Is a contract executed between a licensee and a member of the public 1 week in advance adequate? 1 day beforehand? 1 hour beforehand?

2) Requiring that the function "shall not highlight the consumption of alcoholic liquor" puts this burden on whom? Do licensees need to proof the Facebook invitations of private event customers? Their guests' graduation party invitations? Their guests' wedding invitations?

3) Not open to the public - "Licensee advertising" - Social media is a huge, but ill defined, component of modern life for customers and licensees. Rather than an unwieldy "rebuttable presumption" any proposed rule that aspires to regulate third party social media conversations should instead lay out what, if any, duties a licensee has to monitor their social media presence, and mentions by third parties. In addition a 'safe harbor' provision for Licensees on how they should proceed when learning of non-conforming third party social media posts or advertising would be a vastly preferable approach to the proposed rule. Licensees should be afforded an explicit framework thru either rulemaking or legislation on how they can 'cure' non-conforming third party advertising and social media posts and what reasonable steps, if any, they are required to take to monitor third party statements.

4) "Licensee Door Entry" - Retailers need clarity on if this includes a (locally authorized) cover charge, room charge, or even mandatory service charge on the event bill. As most retailers with substantial private party business charge an automatic service charge on private party bills to the event host, much more clarity is needed in this proposed aspect of the rule.

5) "Door Entry Fee Rebuttable Presumption" - At a minimum this verbiage should be amended to include an explicit language on what is a "recognized charitable or non-profit organization". Must such entities be incorporated as non-profits with the Illinois Secretary of State? Registered with the Illinois Attorney General? Hold a 501(c)3 non-profit certification from the Internal Revenue Service? As written there is insufficient guidance on what is an approved non-profit or charitable cause, and on whether political campaign fundraisers are included.

In addition, "a substantial portion of the funds collected upon entry" benchmark for private party or charitable exemption is not adequate guidance for a restaurant or bar owner opening their venue to a charitable event. The Hospitality Association respectfully submits that a charitable contribution of 25% of the gross proceeds from paid attendees is an adequate benchmark to reflect the many different financial models for these types of events.

6) The "Rooms Exclusively Used for the Private Function" language entirely prevents single room licensees from offering private events or fundraisers without closing their entire premises. As written it's not even clear that licensees with substantial outdoor seating could offer those spaces for private events or fundraisers while keeping their indoor seating open to the public without running afoul of the proposed rule. This language should be entirely deleted from any proposed rule and limited by regulation, if at all, to reasonable steps to identify function members and distinguish them from the general public within the licensed premises. The State of Illinois public policy cannot possibly be to essentially ban single room establishments from hosting charitable events and private parties without closing entirely to the general public.

7) As it appears that a concern about "bar crawls" is a major consideration in the development of this proposed rule, the Hospitality Association strongly urges the Commission to develop and promulgate a rule specific to those types of events that would clarify Liquor Control Act duties of Licensees for such third party promoted events, and reasonable restrictions upon them.

The Hospitality Association supports the proposed rules for "Happy Hour" use in advertisements, proportional pricing, prohibition on drinking games, and advertising of violations of these practices but urges the Commission to redefine each as an individual rule in the event of future legislative changes, so as to avoid needless confusion for Licensees.

8) "Additional Happy Hour" Rules - As future legislative reforms in this area are likely, especially in the area of meal package exceptions are extremely likely, the Hospitality Association strongly urges that this aspect of the proposed rule be withdrawn in total at this time, and also be a subject of a subject matter hearing at a future Chicago meeting of the Illinois Liquor Control Commission to prevent undue confusion and waste of ILCC staff resources.

In order to avoid regulatory confusion by Local Liquor Control Commissioners, the permitted quantities of beer, wine, or spirits in permitted tasting flights under this rule should be specified by rule. What constitutes maximum allowed tasting quantities for flights, should be not less than 30 (thirty) fluid ounces for beer flights, 14 (fourteen) fluid ounces for wine flights, and 3 (three) fluid ounces for spirits flights.

Proposed Rule 100.440 - Brew Pubs

The Hospitality Business Association of Chicago adopts and supports the joint statement of the Associated Beer Distributors of Illinois and the Illinois Craft Beer Guild dated May 30th, 2014 on the proposed rule and, upon information and belief, submitted to the Commission.

Proposed Rule 100.440 (sic) - Retailer Specific / Private Labeling

The Hospitality Business Association of Chicago has no opinion, at this time, on this proposed rule as it involves issues unfamiliar to most of our retailer membership and additional research on potential retailer impact was not possible in the time frame allotted for the comment period.

The Hospitality Business Association of Chicago appreciates the opportunity to comment on the ILCC staff proposed rules. In regards to the practical complexity for average retailers and potential for legislative changes the Hospitality Association again urges the Commissioners to defer discussion of the proposed lengthy 100.285 Happy Hour regulations for a subject matter hearing at a later date so that locally owned hospitality businesses can have the clearest possible guidance on abiding by the Illinois Liquor Control Act and Happy Hour Law.

Respectfully submitted,

Pat Doerr
Managing Director

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